

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

COREY SCHILDT and ASHLEY SCHILDT

PLAINTIFFS

v.

No. 2:16-CV-02218

CRAWFORD COUNTY SHERIFF'S OFFICE, et al

DEFENDANTS

ORDER

On November 29, 2016, the Court dismissed Plaintiffs' claims in this case without prejudice. (Docs. 4 and 5). On December 16, 2016, Plaintiffs filed a notice of appeal (Doc. 6) and, pursuant to Federal Rule of Appellate Procedure 24(a), a motion (Doc. 7) for leave to appeal in forma pauperis. The motion was referred to United States Magistrate Judge Mark E. Ford. On January 3, 2017, the Court entered an order (Doc. 9) adopting the Magistrate's report and recommendations (Doc. 8) and denying Plaintiffs' motion to proceed in forma pauperis. The report and recommendations was entered on the docket on December 19, 2016. Because Plaintiffs proceed pro se, they do not use CM/ECF to receive service electronically, but instead receive service of Court filings by mail. Under Federal Rule of Civil Procedure 6(d), they therefore should have had 17 days, rather than 14 days, to file objections to the report and recommendations. The deadline for Plaintiffs' objections was January 6, 2017, and the Court's January 3 order adopting the report and recommendations was premature. Plaintiffs notified Clerk's office personnel of the error, and the Court instructed the Clerk to accept and file objections from Plaintiffs. Plaintiffs subsequently filed a document styled "motion for reconsideration of IFP" (Doc. 13), which the Court is construing as objections to the report and recommendations. The Court would now correct its oversight and give de novo review to the report and recommendations in light of Plaintiffs' objections, which the Court finds offer neither law nor fact requiring departure from the

Magistrate's findings and recommendations. The Court would then adopt the report and recommendations and deny the motion for leave to appeal in forma pauperis, as it did previously on January 3.

Since January 3, however, this case has been docketed for appeal (Doc. 11), and to correct its oversight, review the report and recommendations de novo as to Plaintiffs' objections, and enter an order again adopting the report and recommendations, the Court requires "the appellate court's leave." Fed. R. Civ. P. 60(a). Plaintiffs can just as easily request the relief they currently seek—leave to appeal in forma pauperis—by filing for that status in the Court of Appeals by February 1, 2017. (Doc. 12). Because the Court would reach the same result now that it reached on January 3, requesting leave and re-entering an order would be a waste of judicial resources, and the Court will decline to do so. Plaintiffs should direct any request to appeal in forma pauperis to the Court of Appeals.

IT IS SO ORDERED this 11th day of January, 2017.

/s/ P. K. Holmes, III

P.K. HOLMES, III
CHIEF U.S. DISTRICT JUDGE